

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

6001 MAY, LLC, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. CIV-14-482-M
)	
STAMATIS ENTERPRISES, INC., et al.,)	
)	
Defendants,)	
)	
and)	
)	
STAMATIS ENTERPRISES, INC., et al.,)	
)	
Third-Party Plaintiffs,)	
)	
vs.)	
)	
SAFETY TECH, INC., et al.,)	
)	
Third-Party Defendants.)	

ORDER

Before the Court is third-party plaintiffs’ Motion to Strike Affirmative Defenses in Answer of Cardinal Engineering, Inc. and Steve Mason, filed June 5, 2015. On July 7, 2015, third-party defendants Cardinal Engineering, Inc. and Steven Mason (“Cardinal and Mason”) filed their response. Third-party plaintiffs move this Court to strike certain of the affirmative defenses of third-party defendants Cardinal and Mason because the defenses are not supported by sufficiently pled facts.

Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). Because striking a portion of a pleading is a drastic remedy and because a motion to strike may often be made as a dilatory tactic, motions to strike under Rule 12(f) generally are

disfavored. *See Colo. Milling & Elevator Co. v. Howbert*, 57 F.2d 769 (10th Cir. 1932) (observing that courts should proceed with extreme caution in striking a pleading). While motions to strike are generally disfavored, the decision to grant a motion to strike is within the discretion of the court. *See Scherer v. United States Dep't of Educ.*, 78 F. App'x 687, 689 (10th Cir. 2003). Further, while the Tenth Circuit has not ruled on whether *Twombly* and *Iqbal* apply to pleading affirmative defenses, this Court has ruled that they do apply. *See, e.g., Burget v. Capital W. Secs., Inc.*, Case No. CIV-09-1015-M, 2009 WL 4807619 (W.D. Okla. Dec. 8, 2009); *Suarez-Martinez v. Wells Fargo Bank, N.A.*, Case No. CIV-14-1322-M, 2015 WL 1040420 (W.D. Okla. Mar. 10, 2015). The Court, therefore, finds that the affirmative defenses at issue in this case must satisfy the pleading standards set forth in *Twombly* and *Iqbal*.

Third-party plaintiffs move to strike third-party defendants Cardinal and Mason's affirmative defenses nos. 2, 4, 5, 6, and 8.¹ Third-party plaintiffs assert that third-party defendants Cardinal and Mason have pled no facts to support these affirmative defenses and that these affirmative defenses are, therefore, deficient under *Twombly* and *Iqbal*. Third-party defendants Cardinal and Mason assert that these defenses were appropriately pled. Having carefully reviewed third-party defendants Cardinal and Mason's Answer to Third-Party Complaint, the Court finds that third-party defendants Cardinal and Mason have set forth absolutely no factual basis for these affirmative defenses; third-party defendants Cardinal and Mason merely include a boilerplate, conclusory statement asserting these defenses. The Court, therefore, finds that these affirmative defenses fail to satisfy the

¹Third-party plaintiffs also move to strike affirmative defense no. 10, which reserves the right to assert any and all affirmative defenses which discovery may reveal appropriate. In their response, third-party defendants Cardinal and Mason state that this statement is not an affirmative defense. Having reviewed the parties' submissions, the Court finds no need to strike third-party defendants Cardinal and Mason's reservation of their right to assert additional affirmative defenses.

Twombly and *Iqbal* pleading standards and should be stricken. However, the Court finds that third-party defendants Cardinal and Mason should be granted leave to amend their answer to cure the above deficiency.

Accordingly, the Court GRANTS third-party plaintiffs' Motion to Strike Affirmative Defenses in Answer of Cardinal Engineering, Inc. and Steve Mason [docket no. 114], STRIKES third-party defendants Cardinal and Mason's affirmative defenses nos. 2, 4, 5, 6, and 8, and GRANTS third-party defendants Cardinal and Mason leave to file an amended answer. Said amended answer shall be filed within fourteen (14) days of the date of this Order.

IT IS SO ORDERED this 7th day of October, 2015.


VICKI MILES-LAGRANGE
CHIEF UNITED STATES DISTRICT JUDGE